



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,627	07/29/2003	Joseph C. Maley	ACRY4.CIP	9066

6980 7590 02/23/2007
TROUTMAN SANDERS LLP
600 PEACHTREE STREET, NE
ATLANTA, GA 30308

EXAMINER

AHMED, HASAN SYED

ART UNIT	PAPER NUMBER
----------	--------------

1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/630,627

Applicant(s)

MALEY ET AL.

Examiner

Hasan S. Ahmed

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,4,6-10 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/25/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of Applicants' IDS filed on 25 January 2007 and amendments/remarks filed on 21 November 2006.

* * * * *

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-17 remain rejected under 35 U.S.C. 102(b) as being anticipated by Asmus (U.S. Patent No. 5,270,358).

Asmus discloses a transdermal composition comprising a matrix (see col.2, lines 32-38). The disclosed matrix is the instant matrix as claimed:

- the matrix material (e.g. polyacrylamide) of instant claim 11 (see col. 6, line 66);
- the active agent of instant claim 11 (see col. 12, lines 12-26);
- the humectant (e.g. glycerol) of instant claim 11 (see col. 9, lines 61-62);
- the moisture content of instant claim 11 (see col. 3, line 10; examples 87 and 88);
- the organic acid of instant claim 11 (see col. 14, line 52);
- the moisture management system (as disclosed in pages 23-24 of the Specification, i.e. guar gum) of instant claim 12 (see col. 6, line 68);

Art Unit: 1615

- the attachment element (adhesive) of instant claim 13 (see col.2, lines 32-38);
- the polyacrylamide of instant claim 14 (see col. 6, line 66);
- the antibacterial (antimicrobial) compounds of instant claim 15 (see col. 12, lines 12-26);
- the glycerol of instant claim 16 (see col. 9, lines 61-62); and
- the moisture content of instant claim 17 (see col. 3, line 10; examples 87 and 88).

* * * * *

Response to Arguments

Applicants' arguments filed 21 November 2006 have been fully considered but they are not persuasive.

Applicants argue that, "[i]n Asmus, there is no teaching of providing moisture to the application site, and in fact, there is clear teaching against providing moisture to the site..." See remarks (filed 21 November 2006), page 6.

Examiner respectfully submits that the Asmus reference discloses each and every element of the instant claims vis-à-vis the broad construction of the instant claims.

As currently constructed, claim 11 does not specify the source of moisture at the dermal structure or whether there is a direct correlation between the diffusion gradient and moisture at the dermal structure. The claim language lacks the subordinating conjunction needed to establish a causal link between the diffusion gradient and moisture at the dermal surface.

Art Unit: 1615

Furthermore, the claim does not specify the extent of moisture at the dermal structure; there is no indication in the claim language that the dermal structure will be subject to increased moisture as a result of the diffusion gradient, as opposed to ambient moisture resulting from water content in the claimed composition. The Asmus reference discloses water content within the range recited in instant claim 17 (see examples 87 and 88). Thus, the article disclosed by Asmus will provide some level of moisture to the dermal structure, as instantly claimed. As such, examiner respectfully submits that the Asmus reference anticipates the instant application, as claimed.

* * * * *

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

★

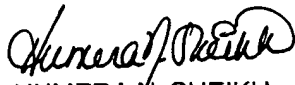
Art Unit: 1615

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


HUMERA N. SHEIKH
PRIMARY EXAMINER
TC-1600